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NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

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ADR

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16 JANE PENCE,

No.

C07-03451

17 Plaintiff,
18 vs.

COMPLAINT FOR
DISABILITY BENEFITS

"DEMAND FOR JURY TRIAL"

19 LIBERTY LIFE ASSURANCE
20 COMPANY OF BOSTON,

21 Defendant.
22 _____/

23 Comes now plaintiff alleging of defendant as follows:
24

25 **Jurisdiction**

26 1. This suit seeks review of a failure to extend benefits under a long term disability
27 plan which is not subject to ERISA, 28 U.S.C. 1132. Federal diversity jurisdiction arises under 28
28 U.S.C. 1332(a).

Facts

2. Plaintiff is a beneficiary of the University of California Long Term Disability Plan through her employment at the University of California. The plan is not subject to the Employee Retirement Income Security Act of 1974 because it is a governmental plan.

4. Defendant Liberty Life Assurance Company of Boston is an insurance company and corporation organized under the laws of the State of Massachusetts, with its principal place of business in Massachusetts.

5. Liberty Life issued a group disability insurance policy to the University of California which provides long term disability insurance for employees of that University who become disabled. The policy provides for disability payments as a percentage of prior earned income. The University of California is a governmental employer.

6. In 2003, while employed as a chemist by the University of California, Ms. Pence became disabled as the result of illness. She has been unable to work since December 12, 2003.

7. Plaintiff applied for short term and supplemental disability in August, 2004. Defendants denied the claim and the appeal. Under the policy Ms. Pence would have received benefits in the amount of \$5347.30 monthly (less offsets) from December 12, 2003 or until Ms. Pence was able to return to work, or until she turns 65 on November 9, 2017. Ms. Pence received retirement benefits beginning October 2004 in the amount of \$2949.18. She received workers' compensation (temporary) pay in the amount of \$2608. per month until November, 2005, and workers' compensation (permanent) pay in the amount of \$736. per month until January 2006. She received Social Security Disability pay from July 2004 until January 2005 in the amount of \$1407, which was increased to \$1445 until January 2006. She is currently receiving \$1505. per month in Social Security benefits. Her loss through the end of February, 2007 totals: \$4307.53. Total benefits lost through the time Ms. Pence turns 65 total: \$114,161,29.

1 8. The termination of benefits was made without any change in Ms. Pence's medical
2 condition or abilities, and it was done in bad faith.

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4 9. These general allegations are incorporated into each claim for relief below.

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7 FIRST CLAIM FOR RELIEF – BAD FAITH
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9 10. Defendant Liberty Life undertook to insure Ms. Pence against disability and the
10 associated financial calamity.

11
12 11. Defendant Liberty Life acted in bad faith in connection with the termination of
13 benefits because, inter alia:

14
15 a. Defendant "cherry picked" the medical evidence, utilizing those parts which
16 supported termination of benefits while ignoring other parts, instead of considering the information
17 as a whole;

18
19 b. Defendant changed its position on benefit eligibility without any change in the
20 underlying medical condition;

21
22 c. Defendant rejected the opinions of the treating physicians and those of its
23 examining defense physicians, including its defense neuropsychologist, and simply continued
24 seeking additional medical opinions until it found some which were satisfactory to its position.

25
26 12. The acts of defendant was and is in bad faith, and was and is being done
27 fraudulently, maliciously and oppressively, with the knowledge that their acts are substantially
28 certain to injure, vex, annoy and harass Ms. Pence and with conscious disregard of her rights.

1 13. As a proximate result of the foregoing, Ms. Pence has been damaged as set forth
2 below.

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6 SECOND CLAIM FOR RELIEF - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
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8 14. The actions of defendant, set forth in 1-13 above was and is extreme and
9 outrageous, and was and is known by it to be substantially certain to cause Ms. Pence great
10 emotional distress. In particular, defendant abused Ms. Pence's rights under the policy by changing
11 its position on disability without a change in Ms. Pence's medical condition, by searching through
12 multiple defense medical consultants until it found one whose opinion it desired and by arbitrarily
13 rejecting the opinions of all of the treating health care providers. Defendant was well aware that Ms.
14 Pence relied upon defendant for her financial security and well-being, and that the arbitrary
15 termination of benefits would cause her great emotional distress.

16
17 15. These acts all were intended to and did cause Ms. Pence grave financial and
18 emotional distress, and they were all a part of a corporate plan of Liberty Life Assurance Company of
19 Boston to wrongfully deny benefits its insureds, in order to force them to file suit in the hope that
20 defendant could then compromise the claim and cancel the remaining coverage due under the policy.
21

22 16. The actions of the defendant in terminating disability payments to Ms. Pence was
23 known by it to be substantially certain to vex, injure, harass, and annoy Ms. Pence and was known by
24 defendant to violate her rights.

25
26 17. The actions of defendant have been and are causing Ms. Pence great emotional
27 and financial distress, not only by rendering her unable to pay her bills in timely fashion, but because
28 the actions of the defendants have aggravated the financial stress and loss of security attendant to her

1 already existing disability and thereby impaired her ability to recover from her illness.

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3 18. As a proximate result thereof, Ms. Pence has been damaged as set forth below.

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7 THIRD CLAIM FOR RELIEF - BREACH OF CONTRACT

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9 19. By its actions, defendant Liberty Life breached the policy by failing to pay
10 benefits due thereunder, and failing to process claims properly under the policy.

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12 20. Ms. Pence performed all of her obligations under the policy.

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14 21. As a proximate result of the foregoing, Ms. Pence has been damaged as set forth
15 below.

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17 DAMAGES


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19 22. Ms. Pence has been damaged by loss of benefits due under the policy from
20 December, 2003 through age 65 in the approximate sum of \$114,161.29.

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22 23. Ms. Pence has suffered general damages including loss of financial security,
23 embarrassment and humiliation, and emotional distress, in an amount to be proven at trial, but
24 estimated at \$500,000.

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26 24. Ms. Pence has been forced to retain counsel and incur fees and court costs in
27 order to secure the benefits owed to her, in an amount not now known with certainty but to be proved
28 at trial and estimated at \$250,000. through trial.

Wherefore, Ms. Pence prays for relief as follows:

- Plaintiff hereby demands a jury trial.


Laurence F. Padway
Attorney for plaintiff